IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.E.A. No.8 of 2004
Date of decision: November 6, 2006

The Commissioner, Central Excise Commissionerate, Delhi-III.

-----Appellant

Vs.

M/s A.B. Card Clothing (Pvt.) Limited.

-----Respondent

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE RAJESH BINDAL

Present: Mr. M.S. Guglani, Advocate
for the appellant.

Mr. A.R. Madhav Rao, Advocate
for the respondents.

ORDER:

This appeal has been preferred under Section 35(H)(1) of the Central Excise Act, 1944 (for short, "the Act") by revenue against the order dated 16.09.2003 passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi proposing following substantial questions of law:-

> "(i) Whether the Hon'ble Tribunal is correct in allowing Modvat Credit in terms of Rule 57Q in respect of the Capital Goods where the statutory declaration, required under Rule 57T of the Central Excise Rules, 1944, was not filed by the party within the prescribed/extended time period, or
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> (ii) Whether Hon'ble Tribunal was correct in computing the time limit, for filing of statutory declaration from the date of registration when the law specifically stipulated the same to be from the date of receipt of capital goods in the factory."

The assessee is engaged in the manufacture of card-clothing and got itself registered with the Central Excise Department vide registration certificate No.04/R-III/GGN/98 dated 14.01.1998. It filed a declaration on 23.01.1998 in terms of Rule 57T of the Central Excise Rules, 1944 (for short, "the Rules") for availing

Modvat credit on capital goods received in the factory on 19.09.1996 under bill of entry No.7733 dated 21.08.1996. The Original Authority denied Modvat credit on the ground that irrespective of the fact that factory had not come into existence, the assessee was required to file declaration of goods being received in the factory. Since the declaration had not been filed for more than one year after the receipt of goods in the factory, delay beyond three months of receipt of goods could not be condoned as per Rule 57T aforesaid.

On appeal, the Commissioner (Appeals) upheld the claim of the assessee on the ground that 'factory' was a place where production was carried out and since the factory itself was registered on 14.01.1998, time for filing declaration commenced from the said date.

The Tribunal dismissed the appeal of the revenue following its earlier decisions in ***CCE, Coimbatore v. Vaithilingam Spinning Mills (P) Ltd.*** 2002 (51) RLT 461 (CEGAT-Che) and ***CCE, Chennai v. Sivagurunathan Synthetics (P) Ltd.,*** 1998 (104) ELT 657 (T).

We have heard learned counsel for the parties.

Learned counsel for the revenue submitted that Rule 57T of the Rules has to be strictly construed and declaration having not been filed in terms of the said Rule, when the goods were received in the factory or within three months thereof, assessee was not entitled to Modvat credit.

Learned counsel for the assessee submitted that apart from the reasoning contained in the order of the appellate authority namely that factory itself was registered on 14.01.1998 and declaration was filed immediately thereafter, the rule itself was amended on 9.2.1999 and as per circular of the department No.441/7/99-CX dated 23.2.1999, the amended rule is to apply to pending cases, which include proceedings pending in appeal and thus, present case is to be governed by the amended rule. He submits that this is the view taken by the Tribunal in ***Kamkhya Steels (P) Ltd. v. Commissioner of Central Excise, Meerut***

2000(121) ELT 247 (Tribunal-LB) which decision has been followed in **Vaithilingam Spinning Mill***'s* case (supra).

Since the amendment and circulars are referred in the order of the Tribunal in the case of ***Kamkhya Steel***'s case (*supra)*, we reproduce paras 6 and 7 of the said order which are as follows:-

> "6. Shri A.R. Madhav Rao, ld. Advocate as an intervener submitted that the question referred to the Larger Bench in the instant case need not be answered and matter be remanded to the Adjudicating Authority to examine the issue afresh in the light of amendment to Rules 57G and 57T as per Notification No.7/99-C.E. (N.T.), dated 9.2.1999, and the two Circulars (M.F.D.R. letter F.No.267/6/92-CX dated 30.1.1992 and Circular No.441/7/99-CX., dated 23.2.1999). He referred to the4 relevant amendment [7/99-C.E. (N.T.), date 9.2.1999] which is as under:-
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> > "7/99-C.E.(N.T.), dated 9.2.1999: In exercise of the powers conferred by Section 37 of the Central Excise Act, 1944 (1 of 1944), the Central Government hereby makes the following rules further to amend the Central Excise Rules, 1944, namely:-
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> > 1. (1) These rulels may be called the Central Excise (3rd Amendment) Rules, 1944.
> >
> > (2) They shall come into force on the date of their publication in the official Gazette.
> >
> > 2. In the Central Excise Rules, 1944,-
> >
> > (a) in rule 57G, after sub-rule (10), the following sub-rule shall be inserted, namely,-
> >
> > (11) Credit under sub-rule (2) shall not be denied on the grounds that –
> >
> > (i) any of the documents, mentioned in sub-rule (3) does not contain all the particulars required to be contained therein under these rules, if such document contains details of payment of duty, description of the goods, assessable value, name and address of the factory or warehouse;
> >
> > (ii) the declaration filed under sub-rule (1) does not contain all the details required to be contained therein or the manufacturer fails to comply with any other requirements under sub-rule(1)."

7. He submitted that circulars are binding on the authorities functioning under the statute. Referring to the Circular No.441/7/99 dated 23.2.1999, he said that Circular was issued to follow certain guidelines in respect of Notification No.7/99 dated 9.2.1999 while considering the admissibility of Modvat credit and further it was specified in the circular that guidelines are applicable to the pending cases and the pending cases are to be disposed of accordingly. In this context, he referred to the decision of the Supreme Court in the case of *Mathew M. Thomas v. Commissioner of Income-tax* reported in 1999(111) E.L.T. 4 (S.C.) wherein it was held that proceedings shall include proceedings at the appellate stage. Particularly, he drew our attention to the para 8 of the said judgment which reads as under:-

> "8. It is well settled that the word "Proceedings" shall include the proceedings at the appellate stage. It is sufficient to refer to the judgment of this Court in *Garkapati Veeraya* v. *N. Subiah Choudhry & Ors.* AIR 1957 S.C. 540 wherein the Court said at page 553:-
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> (i) That the legal pursuit of a remedy, suit appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceedings".
>
> Hence we are unable to persuade ourselves to agree with the view expressed by the Full Bench of the High Court in the judgment under appeal that the Circular would apply only to proceedings pending before the Competent Authority. "

Learned counsel for the revenue is unable to show as to how the case of the assessee is not covered by the amended rule and the circular in terms of which the assessee is clearly entitled to Modvat credit.

In view of above, we do not find that any substantial question of law arises for consideration.

The appeal is dismissed.

(ADARSH KUMAR GOEL)
JUDGE

November 6, 2006
ashwani

(RAJESH BINDAL)
JUDGE